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OFFICE OF PETITIONS

In re Application of
Stephens, et al. :
Application No. 09/655,929 : DECISION ON
Filed: September 6, 2000 : PETITION
Attorney Docket No. 8224.003.NPUS00 :

This is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181, or in the alternative to revive under 37 CFR 1.137(b), filed August 16, 2007,

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application was held abandoned for failure to timely response to the non-final Office action mailed December 30, 2003. No response having been received, the application became abandoned on March 1, 2004. The Office mailed a Notice of Abandonment on February 10, 2006.

Petition Under 37 CFR 1.181:

With the instant petition, applicant argues that he did timely file a response (with a two month extension of time) on April 7, 2004. However, the PTO file is the official record of papers originally filed in this application. A review of the official file reveals that no reply filed on that date. An applicant alleging that a paper was filed in the PTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. Applicant has not submitted *prima facie* evidence in the form of a USPTO date stamped postcard receipt. Moreover, applicant has not submitted a copy of the reply bearing a timely dated Certificate of Mailing. Accordingly, the petition to withdraw the holding of abandonment must be dismissed.

Petition Under 37 CFR 1.137(b):

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply to the December 30, 2006 Office action.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition fee of \$750 has been charged to Deposit Account No. 14-1437, as authorized.

The matter is being forwarded to Group Art Unit 3628 for consideration of the reply to Office action, filed August 16, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions